Supreme Court, U.S.
FILED
931780 MAY 9 1994
OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM 1993

JOSEPH A. RYAN,

Petitioner,

vs.

DAVID C. SCHUTTER, ERIC A. SEITZ,
PAUL ALSTON, MARY LOU McKENNA,
and DOE DEFENDANTS 1-100,

Respondents.

On Petition for Writ of Certiorari
to The United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

JOSEPH A. RYAN #647
4614 Kilauea Avenue, #559
Honolulu, Hawaii 96816
Telephone: (808) 734-2811

Petitioner, pro se

178pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the lower federal courts erroneously and/or wrongfully rejected federal jurisdiction?

2. Whether the lower federal courts erroneously and/or wrongfully abused the use of memorandum opinion?

3. Whether in substance and effect Petitioner was wrongfully punished as a "whistle blower" within the Judicial Branch of Government?

LIST OF PARTIES

The names of all parties appear in the caption. They are referred to herein by their surnames for conciseness and clarity.

TABLE OF CONTENTS

	Page
Table of Authorities	vii
OFFICIAL AND UNOFFICIAL REPORTS	1
BASIS FOR JURISDICTION OF THE U.S. SUPREME COURT. . . .	2
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED .	3
STATEMENT OF THE CASE	4
A. BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE AND CONTINUING INTO THE U.S. COURT OF APPEALS, NINTH CIRCUIT.	4
B. IMPACT OF INTERPLEADER INJUNCTION	8
DIRECT AND CONCISE ARGUMENT AMPLIFYING REASON RELIED ON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI	29
CONCLUSION.	34
APPENDICES "A" TO "K":	
A 6/4/92 Order Granting Motion to Dismiss; Awarding Rule 11 Sanctions, Civ. No. 92-00160 HMF (CR 10). . . .	1-15

TABLE OF CONTENTS

Page

APPENDICES "A" TO "K":

B 12/13/93 Memorandum, CA No. 92-16102. 17-23

C 3/23/94 Order [sanctions of $1,250 attorney's fees], CA 92-16102. 25

D 2/16/94 Order [rehearing], CA No. 92-16102. . 27-28

E 12/13/93 Judgment, CA No. 92-16102 29-30

F CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

U.S. Constitution:

Article VI, Clause 2 . . 31

Article VI, Clause 3 . . 31

18 United States Code:

Section 2, Principals. . 32

Section 3, Accessory after the fact . . . 32

Section 241, Conspiracy against rights . . . 33

18 United States Code:

Section 371, Conspiracy to commit offense or

TABLE OF CONTENTS

Page

APPENDICES "A" TO "K":

to defraud United States 34

Section 401, Power of court. 35

Section 402, Contempts constituting crimes. 36

Section 1341, Frauds and swindles 38

Section 1512, Tampering with a witness, victim, or an informant 40

28 United States Code:

Section 1291, Final decisions of district courts 43

Section 1651, Writs. . . 44

Section 1654, Appearance personally or by counsel. 45

Section 2071, Rule-making power generally. . . 45

Section 2283, Stay of State court proceedings 48

Section 2361, Process and procedure. . . . 48

TABLE OF CONTENTS

Page

APPENDICES "A" TO "K":

Hawaii Revised Statutes:

Section 708-880, Commercial bribery 49

Local Rules of the U.S. District Court (Hawaii)

Local Rule 110-3, Standard of Professional Conduct 52

Code of Professional Responsibility, The Judiciary, State of Hawaii, Disciplinary Rules:

DR 1-102, Misconduct . . 53

DR 1-103, Disclosure of Information to Authorities 54

DR 5-101, Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment. . . . 54

DR 5-102, Withdrawal as Counsel When the Lawyer Becomes a Witness. . . 55

G 9/4/86, Final Order and Judgment (1) Granting

TABLE OF CONTENTS

Page

APPENDICES "A" TO "K":

Permanent Certification to Mandatory Class for Settlement Purposes, (2) Granting Final Approval to Partial Settlements With Newland, Lam, and Jolly, (3) Dismissing and Releasing Settlement Class Claims Against Newland, Lam and Jolly, (4) Approving General Plan of Allocation Set Forth in Answer to Complaint for Interpleader, and Instructing BBRD&W Bankruptcy Trustee to Prepare Distribution Proposal, (5) Discharging Illinois Union Insurance Company, and (6) Permanently Enjoining Other Proceedings, Civ. No. 84-0881, Bush et al. v. Rewald et al., and Related Interpleader Illinois Union Insurance Co., v. Bush et al., U.S. District Court, District of Hawaii (CR 4, Ex. "6" thereto). . . 57-76

H 4/20/87, Stipulation and Order Re Compromise of McKenna Objection and Class Action Settlement Fund Allocation, Civ. No.

TABLE OF CONTENTS

Page

APPENDICES "A" TO "K":

84-0881, Bush et al. v. Rewald et al., U.S. District Court, District, District of Hawaii (CR 4, Ex. 3b thereto). 77-85

I 1/11/88, Letter to Eric Seitz, Esq. from Howard Glickstein re settlement of McKenna's claim against David C. Schutter (CR 4, Ex. "4" thereto) 87-96

J 2/22/88, Complaint for Damages; Exhibit "A" [Complaint in Civ. No. 82201, McKenna-Moran v. Newland et al.]; Demand for Jury Trial and Summons, Civ. No. 88-0534-02, McKenna v. Ryan et al., First Circuit Court, State of Hawaii 97-117

K 8/30/91, Special Verdict Form, Civ. No. 88-0534-02, McKenna v. Ryan et al., First Circuit Court, State of Hawaii (CR 3, Ex. B, Ex.A thereto). 119-129

TABLE OF AUTHORITIES

Page(s)

CASES

Brown v. Lam, et al., Civil No. 84-1261, First Circuit Court, State of Hawaii 8

Brug v. Toda and Prudential Bache v. Lam, Newland, Wong and Signori, Civil No. 83-0184, First Circuit Court, State of Hawaii 8

Bush et al. v. Rewald et al., and Related Interpleader, Illinois Union Insurance Co. v. Bush et al., 619 F.Supp. 585 (D.C. Haw. 1985); Civil No. 84-0881, U.S. District Court, Hawaii; CA No. 86-2948, U.S. Court of Appeals, Ninth Circuit 4, 15, 16

Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 108 S.Ct. 1684, 100 L.Ed. 2d 127 (1988) 31

Dugas v. American Surety Co., 300 U.S. 414 (1936). . . 6, 29

Franchise Tax Board v. Laborers Vacation Trust, 463 U.S. 1 (1982). . . . 30

TABLE OF AUTHORITIES

Page(s)

CASES

Hamilton v. Nadai, 453 F.2d 152, 157 (9th Cir. 1972). 30

In re Eastern Sugar Antitrust Litigation, 697 F.2d 524 (3rd Cir. 1982). 33

Kingman & Co. v. Western Mfg. Co., (1898), 170 U.S. 675, 42 L.Ed. 1192, 18 S.Ct. 786. 2

McKenna v. Newland, et al., Civil No. 82201, First Circuit Court, State of Hawaii. 8

McKenna v. Ryan, et al., Civil No. 88-0534-02, First Circuit Court, State of Hawaii. 20, 21-22, 26

Royal Ins. Co. of America v. Quinn-L Capital Corp., 960 F.2d 1286 (5th Cir. 1992). 31

Ryan v. McKenna, Civil No. 88-00936, U.S. District Court, Hawaii; CA No. 89-16501, U.S. Court of Appeals, Ninth Circuit . 22

TABLE OF AUTHORITIES

Page(s)

CASES

State Farm Fire & Casualty Co. v. Tashire, 386 U.S. 523, 87 S.Ct. 1199, 18 L.Ed.2d 270 (1967) 29

Taylor v. Anderson, 234 U.S. 74 (1914). 30

Texas Employers Ins. Ass'n. v. Jackson, 862 F.2d 491 (5th Cir. 1988) (en banc) cert. den., 490 U.S. 1035, 109 S. Ct. 1932, 104 L.Ed.2d 404 (1989) 31

United States v. Major Oil Corp., 583 F.2d 1152 (10th Cir. 1978) 30

Wallace v. Wong, et al., Civil No. 78881, First Circuit Court, State of Hawaii 8, 10, 13, 16

UNITED STATES CONSTITUTION

Article III 3, 5

Article VI. 3, 5, 27, 29

Amendment V 32

TABLE OF AUTHORITIES

Page(s)

UNITED STATES CODE

18 United States Code:

Section 2. 3

Section 3. 3

Section 241. 3

Section 371. 3

Section 401. 3

Section 402. 3

Section 1341 3

Section 1512 3

28 United States Code:

Section 1254(1). 2

Section 1291 3

Section 1331 5

Section 1335 . . . . . 4, 5

Section 1651 3

Section 1654 3

Section 2071 3

Section 2101(c). 2

Section 2106 2

TABLE OF AUTHORITIES

Page(s)

UNITED STATES CODE

28 United States Code:

Section 2283 . . . . . 3, 6, 30

Section 2361 . . . . . 3, 4, 5

HAWAII REVISED STATUTES

Section 708-880 . . . . . 3, 12

FEDERAL RULES OF CIVIL PROCEDURE

Rule 11 33

LOCAL RULES OF THE U.S. DISTRICT COURT, DISTRICT OF HAWAII

Local Rule 110-3. 3

CODE OF PROFESSIONAL RESPONSIBILITY, STATE OF HAWAII

Disciplinary Rules

Rule 1-102 . . . . . 3, 32

Rule 1-103(A). 3

Rule 5-101(B). 3, 23

Rule 5-102(A) and (B). . 4, 23

NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM 1994

JOSEPH A. RYAN,	)	Petition for
	)	Writ of Certio-
Petitioner,	)	rari to the
	)	United States
vs.	)	Court of
	)	Appeals for the
DAVID C. SCHUTTER,	)	Ninth Circuit
ERIC A. SEITZ, PAUL	)	
ALSTON, MARY LOU	)	
McKENNA, and DOE	)	
DEFENDANTS 1-100,	)	
	)	
Respondents.	)	
	)	

PETITION FOR WRIT OF CERTIORARI

OFFICIAL AND UNOFFICIAL REPORTS

On June 4, 1992, the U.S. District Court, District of Hawaii (hereinafter "USDC") entered its Order Granting Motion to Dismiss; Awarding Rule 11 Sanctions. (Appendix "A").

On December 13, 1993, the U.S. Court of Appeals, Ninth Circuit (hereinafter "USCA"), rendered its Memorandum (unofficial) on December 13,

1993. (Appendix "B".)

BASIS FOR JURISDICTION OF THE U.S. SUPREME COURT

On December 13, 1993, the USCA entered its Memorandum. (Appendix "B".)

On February 16, 1994, the USCA entered its Order respecting a rehearing. (Appendix "D".)

On February 28, 1994, the USCA issued its mandate affirming the USDC. (Appendix "E".)

Jurisdiction of this Court is invoked under 28 **U.S.C.**, Sec. 1254(1). A decision of a federal court dismissing a case for want of jurisdiction was reviewed via certiorari in Kingman & Co. v. Western Mfg. Co., (1898), 170 U.S. 675, 42 L.Ed. 1192, 18 S.Ct. 786. This Court also has jurisdiction pursuant to 28 **U.S.C.**, Secs. 2101(c), 2106, and, if deemed warranted

by this Court, jurisdiction is also invoked under Article III of the **U.S. Constitution**, and the All Writs Act, 28 **U.S.C.**, Sec. 1651.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The following Constitutional provisions, Statutes and Rules involved are submitted as Appendix "F" hereto:

U.S. Constitution

Article VI.

United States Code

18 **U.S.C.**, Sections 2, 3, 241, 371, 401, 402, 1341, and 1512;

28 **U.S.C.**, Sections 1291, 1651, 1654, 2071, 2283, 2361.

Hawaii Revised Statutes

Section 708-880.

Local Rules of the U.S. District Court (Hawaii)

LR 110-3.

Disciplinary Rules

DR 1-102, 1-103(A), 5-101(B), and

5-102(A), (B).

STATEMENT OF THE CASE

A. BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE AND CONTINUING INTO THE U.S. COURT OF APPEALS, NINTH CIRCUIT.

The court of first instance (USDC) initially exercised federal jurisdiction over the parties RYAN, SCHUTTER, SEITZ, and McKENNA, and the subject matter of this case when it took exclusive jurisdiction pursuant to the Interpleader Act of Congress (28 U.S.C., Secs. 1335 and 2361) and the U.S. Bankruptcy Act, issued a temporary injunction and therefter a permanent injunction staying all other courts, state and federal, and all parties, their lawyers and all in privity in Bush et al. v. Rewald et al., and Related Interpleader Action Illinois Union Insurance Co. v. Bush et al., USDC Civil No. 84-0881. Via

appeal by SEITZ and McKENNA, USDC, Civ. No. 84-0881 became USCA CA No. 86-2948.

The common law torts RYAN complains of in the complaint herein were secretly planned and carried into execution from the "bosom" of the USCA as a secret part of the "settlement"* of the appeal in CA No. 86-2948, and the pro rata distribution of the Interpleader funds held in trust in the USDC.

In his complaint, RYAN invoked jurisdiction pursuant to 28 **U.S.C.**, Sec. 1331, and Article III, Section 2, and Article VI (The Supreme Law of the Land Clause), **U.S. Constitution**, the federal interpleader statutes, 28 **U.S.C.**, Secs. 1335 and 2361 and the

---

*Appendix "H" hereto is a copy of the disclosed portion of tne settlement of the appeal and pro rata distribution of the Interpleader funds.)

U.S. Bankruptcy Act.

Jurisdiction was also invoked under the power of the Federal Courts to protect and effectuate federal judgments (28 **U.S.C.**, Sec. 2283). Dugas v. American Surety Co., 300 U.S. 414 (1936).

Jurisdiction of the subject matter and the parties was fully averred in the Verified Complaint, Exhibit "A" and Demand for Trial by Jury filed on 3/23/92 (CR 1).

The secret portion of the settlement in USDC Civ.No. 84-0881 reached in the USCA in CA No. 86-2948 is averred in paragraphs 23 through 30 of the Verified Complaint (CR 1, at pp.12-16). The secret portion is also disclosed in a letter from SCHUTTER to SEITZ reciting substantial portions of the secret settlement and further distribution of the Interpleader funds between

SCHUTTER, SEITZ and McKENNA (Appendix "I" hereto). SCHUTTER and SEITZ, as lawyers involved in the secret settlement and further distribution of the Interpleader funds also agreed to testify that the Interpleader judgment did not extinguish McKENNA's claims and that said federal judgment exonerating D. Alden Newland of malpractice was not res judicata or binding on McKENNA or them or the state courts and judges thereof.

It was the position of RYAN in the USDC and the USCA that those courts, having taken exclusive jurisdiction of the parties, their lawyers and all in privity with them and of the subject matter, and having issued a permanent injunction, never lost jurisdiction. The common law torts of which RYAN complains were planned and carried into execution from the exclusive federal

reservation of the U.S. Judicial Branch of Government.

RYAN also claimed jurisdiction because the controversy arises under the Constitution and laws of tne United States.

B. IMPACT OF INTERPLEADER INJUNCTION

Cases forever enjoined by the Interpleader included McKenna v. Newland, et al., Civil No. 82201, First Cicuit Court, State of Hawaii. McKENNA, as a party, and RYAN, SCHUTTER, and SEITZ, as her lawyers or persons in privity, were also enjoined (RYAN had a lien). Other cases and parties specifically enjoined were Civil No. 84-1261, Brown v. Lam, et al.; Civil No. 83-0184, Brug v. Toda and Prudential Bache vs. Lam, Newland, Wong and Signori; Civil No. 78881, Wallace v. Wong, et al., First

Circuit, State of Hawaii cases. SCHUTTER, as attorney for Plaintiffs in the three aforesaid cases, was enjoined as were Newland and his attorneys. Whatever was going on in the State Court was enjoined and dismissed.

The Interpleader, as a mandatory order, compelled all parties and their lawyers to answer the Interpleader Complaint. All obeyed except SCHUTTER, SEITZ and McKENNA.

Neither SCHUTTER nor SEITZ filed an answer to the Inteprleader Complaint on behalf of McKENNA. Nevertheless, the USDC did not default McKENNA. The USDC awarded McKENNA a double pro rata share based on all of the money she had deposited with Ronald R. Rewald, a defendant named in the class action suit, and permitted McKENNA to fully participate in the Interpleader funds held in trust by the USDC's Clerk's

Office (Appendix "G" hereto).

SCHUTTER had begun the first class action lawsuit on August 13, 1983 when he began the Wallace case, Civil No. 78881. Newland was either a known "Doe" or a named and identified defendant in all three cases by SCHUTTER.

McKENNA refused to join either the class action begun by SCHUTTER or the class action USDC Civ. No. 84-0881, out of which the Interpleader action developed. McKENNA claimed that Newland was her personal lawyer and that he was responsible to her. McKENNA retained RYAN to sue Newland in the State Court. RYAN filed Civil No. 82201 against Newland and his lawfirm in the State Court. RYAN did not demand a jury trial and did not specifically claim for the first $75,000 McKENNA had deposited directly with Rewald before she ever met Newland.

SCHUTTER and the other Class Action lawyers had demanded trial by jury. Their cases were assigned to the jury trial calendars without trial dates. McKENNA's non-jury trial was ready for trial and set for trial the week of October 5, 1985, and reset for the week of January 6, 1986.

Discovery had disclosed that Newland's only asset was a liability insurance policy of $500,000.00. McKENNA's case against Newland (Civil No. 82201) was set for hearing on a motion for summary judgment by Newland and a cross-motion for partial summary judgment (attorney-client relationship and liability only) by RYAN for McKENNA.**

**At this time, no one knew or suggested that the "Interpleader defendants" Lam, Jolly and Newland (lawyers) named and sued in the aforesaid cases, were all insured by the

Ever since 1972 when Hawaii enacted **Hawaii Penal Code,** Section 708-880 (Appendix "F" hereto at p. 49), it has been a Class C felony in Hawaii for a lawyer to solicit, accept, or agree to accept directly or indirectly any benefit from another person with intent that said lawyer will thereby be influenced to act contrary to a duty to which, as a lawyer, he is subject.

On November 15, 1985, SCHUTTER and McKENNA signed a "Contingency Fee Contract Authorization" (CR 1, p. 7; Appendix "I" nereto). SCHUTTER wrote to RYAN and discharged RYAN and on McKENNA's behalf ordered the file of State Civil No. 82201 be turned over to

---

** the same carrier and the carrier's nome office was from a state in which not one of the 400 plaintiffs in any of the lawsuits was a resident. It was not until July 31, 1986 that Illinois Union filed its Complaint for Interpleader.

him and they recognized a lien right of RYAN in any recovery.

SCHUTTER argued the motion for summary judgment and cross-motion on the record prepared by RYAN in State Civil No. 82201 and defeated Newland's motion and won the cross-motion. (CR 1, p. 8)

On December 10, 1985, SCHUTTER moved to file a second amended complaint in the companion Wallace case (19 plaintiffs), and this made it impossible for his Wallace clients to get to trial ahead of McKENNA. When SCHUTTER moved to file a second amended complaint in the Wallace case, he knew Newland was an identified defendant in that case and he knew that Newland had only $500,000 and that he owed a duty to get that $500,000 for his other clients.

SCHUTTER and McKENNA went to trial

against Newland on April 12, 1986 (Civil No. 82201). SCHUTTER made no written motion to amend the complaint RYAN had drafted but proceeded to trial on it. The non-jury trial lasted a month. On June 2, 1986, SCHUTTER filed "Proposed Findings of Fact and Conclusions of Law" and asked the State Court to award McKENNA $522,422.30 although Newland had only $500,000.00 liability insurance.

The Interpleader, Illinois Union, filed its Complaint for Interpleader on July 31, 1986 in USDC Civ. No. 84-0881. There was diversity. While the total funds held by Illinois Union were $1,351,500:

	Amt.of Policy	Amt.Interpleaded
Lam	$ 751,500.00	$ 751,500.00
Jolly	100,000.00	100,000.00
Newland	500,000.00	350,000.00
Totals:	$1,351,500.00	$1,201,500.00

the Interpleader was allowed to retain

$150,000 of Newland's $500,00 policy from the fund to meet McKENNA's anticipated cross-claim.

The total funds claimed against the Interpleader funds exceeded the Interpleaded funds by about $18 million. The Interpleader was appropriate.

Prior to authorizing the Interpleader, the USDC, in a published interlocutory judgment in the class action case Civil No. 84-0881, Bush et al. v. Rewald, 619 F.Supp. 585 (D.C. Haw. 1985), Newland was granted a summary judgment against the entire class in which the court held:

> "However, Newland is entitled to and is GRANTED summary judgment on tne malpractice count. The record contains no suggestion that he was retained by the firm to render legal services directly to class members, nor that he negligently rendered any incorrect legal advice to any client." Id., at p. 599.

In Bush et al. v. Rewald et al.,

619 F.Supp. 585, SEITZ represented a defendant named Karen Kosko (**id.**, at 589), and it is reported at 592 that SEITZ nad also moved for summary judgment for his client Koshko. SEITZ knew Newland had been awarded summary judgment on the issue of malpractice when he became McKENNA's lawyer.

The federal Interpleader injunction and complaint required SCHUTTER to answer for all of his clients in the Interpleader action. SCHUTTER brought SEITZ in to represent McKENNA while SCHUTTER turned his attention back to the needs of his 19 other clients from the Wallace case. Those 19 clients needed to answer the Interpleader and SCHUTTER answered for them. SEITZ did not answer the Interpleader for McKENNA; no one did. She never cross-claimed. SEITZ only objected to McKENNA being made a member of the

Class.

Although McKENNA objected to and refused to answer the Interpleader, the USDC ordered mandatory class certification and gave McKENNA a double pro rata share (based on all of her deposits plus for the fact she had sued Newland in the State Court [Civil No. 82201]) of all the Interpleader funds produced by the settlement defendants Jolly, Lam and Newland, and dismissed all claims against Newland and Illinois Union and permitted Illinois Union to keep $150,000 of the policy when McKENNA and SEITZ failed to cross-claim against Newland in the Interpleader action.

SEITZ appealed on behalf of McKENNA and this stalled the distribution of the Interpleader funds. The appeal was never pursued. In the USCA, before February 24, 1987, SCHUTTER, McKENNA, and SEITZ agreed that SCHUTTER

would pay $5,000 in cash to McKENNA and SEITZ from the $74,693 SCHUTTER would receive as a fee for representing his other 19 clients, to be paid out of the trust funds held by the USDC, and that SCHUTTER would absorb the $23,375 he had spent in carrying out his contingent fee contract with McKENNA, and that he would waive his lien or "fees" from whatever McKENNA recovered and that appears to be $24,465.00.

In addition to the aforesaid, SCHUTTER helped SEITZ "negotiate a settlement" of McKENNA's appeal to the USCA with the lawyers representing the other class action members by having McKENNA paid another $46,000 in addition to the awarded double pro rata sum out of the funds held in trust in the USDC. (CR 1, pp. 13-15.)

McKENNA had lost (deposited) only $146,246.75 with Rewald. The total

value of the "stipulated settlement of the appeal" of the Interpleader and class action to the USCA (CA No. 86-2948) is:

Disclosed cash from Interpleaded funds. . . .	$ 73,395.00
Cash from Schutter's share of Interpleaded funds. . . .	5,000.00
Cash advanced by Schutter absorbed	23,375.00
Agreed fee due Schutter waived	24,465.00
Cash pro rata share of bankruptcy fund. . .	16,925.24
TOTAL:	$153,160.24

(The above is a summary of Appendix "A" hereto, at page 6.)

Another part of the "settlement" of the appeal in the USCA was an understanding between SCHUTTER, SEITZ and McKENNA that SEITZ and SCHUTTER would claim and testify that because RYAN had sued only for McKENNA's second deposit in State Civil No. 82201, SEITZ and

McKENNA were unable to compel another $75,000 from the Interpleader funds held in trust in the USDC. These two lawyers also agreed to testify that the Interpleader did not extinguish McKENNA's claims against Newland and that the final USDC judgment exonerating Newland of negligence (malpractice) was not res judicata and binding on McKENNA or them.

McKENNA, by and through SEITZ, sued RYAN in the Hawaii State Court in Civil No. 88-0534-02, McKenna v. Ryan et al., in which they alleged:

"Ms. McKenna objected to the mandatory class settlement and filed an appeal resulting in a settlement by which Ms. McKenna received all of her damages that were at stake in the state court litigation, Civil No. 82201.

"Because Defendants Ryan had sued only for Ms. McKenna's second investment of $71,246.75, her recovery in the federal court settlement was limited to that amount." (Appendix "J" hereto, paras. 18 and 19, at pg. 103.)

RYAN answered in that State court

case, moved for summary judgment based on the federal interpleader judgment and interpleader injunction, res judicata, collateral estoppel, and other affirmative defenses; however, the State court denied RYAN any relief, RYAN's counterclaim was dismissed, and RYAN's rights to counterclaim against McKENNA or third-party claim against SCHUTTER and/or SEITZ, were denied him by "Judge Klein" (Appendix "A" nereto at pp. 6-7).

RYAN brought USDC Civil No. 88-00936 against McKENNA seeking a declaratory judgment, damages for intentional harm, negligent infliction of emotional harm, an injunction, and damages. SEITZ answered for McKENNA and moved for summary judgment therein, claiming that because the State court dismissed RYAN's counterclaim in State Civil No. 88-0534, McKenna v. Ryan et

al., McKENNA was entitled to summary judgment in USDC Civil No. 88-00936. The USDC granted SEITZ' motion and RYAN appealed to the USCA in CA No. 89-16501.

THE USCA rendered a Memorandum decision in CA No. 89-16501, reversing the USDC and stated that the State court's order dismissing RYAN's counterclaim was not a final judgment.

The USCA also instructed the USDC that it might have elected to defer to the State court, and, that if, on remand, the USDC chose to defer, the proper course is to stay the federal action pending final judgment by the State courts.

The USDC deferred and stayed all proceedings in Civil No. 88-00936, Ryan v. McKenna. (This is referred to in Appendix "A" hereto, at page 7.)

SEITZ and McKENNA went forward in

State Civil No. 88-534-02. SEITZ knew before and after he brought that lawsuit that he was disqualified to act as McKENNA's lawyer in that he was her only witness, both expert and lay witness, and his action violated **Disciplinary Rules 5-101(B)** and **5-102(A)** and **(B)** (Appendix "F" hereto at pp. 54-56). RYAN moved to disqualify SEITZ. (CR 1, para. 31, p. 16.)

In March 1990, SEITZ met with attorney Paul ALSTON, and ALSTON agreed to act as McKENNA's lawyer and agreed to prosecute RYAN in State Civil No. 88-0534-02. ALSTON was the President of the Hawaii State Bar Association (hereinafter "HSBA"). (CR 1, para. 32, p. 16.)

ALSTON instructed SEITZ to inform the First Circuit Court, State of Hawaii, that he, ALSTON, was too busy

as President of the HSBA to substitute for SEITZ at that time, and that he had requested SEITZ to complete all the necessary preparations and to continue to serve as McKENNA's attorney up to and until the trial of State Civil No. 88-0534-02 began. SEITZ so informed the Court. McKENNA agreed to have ALSTON act as her lawyer. (CR 1, para. 33, p. 16.)

ALSTON did not bring any action or claim against SCHUTTER and SCHUTTER's lawfirm, or SEITZ and SEITZ' lawfirm on behalf of his alleged new client, McKENNA, for their having failed to bring any action against Newland or Rewald or BBRD&W and/or for abandoning McKENNA's lawful claims and rights against Newland and/or Rewald in the Interpleader action. (CR 1, para. 34, p. 17.)

ALSTON did not, and has not

brought any action or taken any steps on behalf of McKENNA to show that she might have been duped into committing the crime of commercial bribery by SCHUTTER or somehow misled by SCHUTTER into believing that she could give RYAN's work and work product to SCHUTTER as a downpayment on the crime of commercial bribery. (CR 1, para. 35, p. 17.)

SCHUTTER, SEITZ and ALSTON agreed that each would inform the judges of the Hawaii State Court and others that they had negotiated a settlement of the lawsuit for McKENNA, SEITZ and ALSTON with Home Insurance Company, a company that provided malpractice insurance for RYAN, and each asserted and informed the judges that Home Insurance had agreed to pay SEITZ, McKENNA and ALSTON $30,000 on account of its malpractice policy with SCHUTTER and

SCHUTTER's lawfirm, and that Home Insurance would provide acceptable assurance that SCHUTTER's insurance rates and status would not be affected by such payment if RYAN would join in that scheme. (CR 1, paras. 36, 37, p. 18.)

RYAN corresponded with Home Insurance and he was informed by his attorney, Edward Y.N. Kim, Esq., that Home Insurance Company informed Mr. Kim that SEITZ', ALSTON's and SCHUTTER's claim that there was such an offer of settlement, was false. SCHUTTER had a $25,000 deductible policy so that $25,000 of the alleged $30,000 was SCHUTTER's money. (CR 1, para. 38, p. 18.)

The trial in State Civil No. 88-0534-02, McKenna v. Ryan et al., began on August 19, 1991. RYAN claimed the trial was in defiance of the perma-

nent injunction issued in the Interpleader action, and that all of McKENNA's claims had been extinguished in the federal courts. RYAN claimed the State court judges involved knew or should have known they were violating the supreme law of the land clause of Article VI of the **U.S. Constitution.** (CR 1, paras. 39, 40, 41, pp. 19-20.)

State Civil No. 88-0534-02 ended in a jury verdict finding that Newland was negligent and his negligence injured McKENNA, and that SEITZ was not negligent but that RYAN (85%), SCHUTTER (10%) and McKENNA (5%) were. (Appendix "K" hereto at p. 128.) Said verdict and the judgment rendered thereon are on appeal to the Supreme Court of the State of Hawaii.

On March 23, 1992, RYAN filed the Verified Complaint herein (CR 1) and specifically sought injunctive relief

from the violation of the Interpleader Injunction and violations of the federal judgment exonerating Newland of any malpractice and enforcement of the federal judgment and federal laws as the facts were revealed by SCHUTTER's, SEITZ', and McKENNA's testimony in State Civil No. 88-0534-02. RYAN also sought damages for torts planned and launched from the reservation of the Federal Judicial Branch of Government (USDC) by lawyers admitted to practice before the federal courts.

It was RYAN's position at all times that the only courts with exclusive jurisdiction of the persons and subject matter are the USDC, USCA, and the Supreme Court of th United States. Both the USDC and USCA have held there is no subject matter jurisdiction and each court has punished RYAN: The USDC imposed sanctions of $1,668.85 (Appen-

dix "A" hereto), and the USCA has imposed $1,250.00 plus costs of $157.00 (Appendix "B" hereto).

DIRECT AND CONCISE ARGUMENT AMPLIFYING REASON RELIED ON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI

A writ of certiorari should be granted. The Federal Interpleader and the Bankruptcy Act via the Supreme Law of the Land clause of Article VI, **U.S. Constitution,** conferred exclusive jurisdiction on the U.S. District Court (Hawaii) and the U.S. Court of Appeals, Ninth Circuit. Their rejection of jurisdiction of the subject matter conflicts with said laws and the holdings in the following cases:

1) State Farm Fire & Casualty Co. v. Tashire, 386 U.S. 523, 87 S.Ct. 1199, 18 L.Ed.2d 270 (1967);

2) Dugas v. American Surety Co., 300 U.S. 414 (1936); and

3) United States v. Major Oil Corp., 583 F.2d 1152 (10th Cir. 1978).

Rejection of jurisdiction also conflicts with prior decisions of this Court as in Taylor v. Anderson, 234 U.S. 74 (1914), cited and followed in Franchise Tax Board v. Laborers Vacation Trust, 463 U.S. 1 (1982).

Rejection of jurisdiction also conflicts with 28 **U.S.C.**, Section 2283, in that the Interpleader Act authorizes the federal courts to enjoin proceedings in State Courts "when necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

Rejection of jurisdiction conflicts with the Ninth Circuit's decision in Hamilton v. Nadai, 453 F.2d 152, 157 (9th Cir. 1972), wherein it held:

"The universal rule is that every court has the inherent power to enforce its judgment and decree."

The rejection of jurisdiction also conflicts with the requirement that Federal courts must prevent State courts from invading and usurping federal power through relitigation of issues previously presented to and decided by Federal Court, especially in those cases where the Supreme Law of the Land clause has bestowed exclusive jurisdiction of the Federal Courts. See Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 108 S.Ct. 1684, 100 L.Ed. 2d 127 (1988). Royal Ins. Co. of America v. Quinn-L Capital Corp., 960 F.2d 1286 (5th Cir. 1992); Texas Employers Ins. Ass'n. v. Jackson, 862 F.2d 491 (5th Cir. 1988) (en banc) cert. den., 490 U.S. 1035, 109 S. Ct. 1932, 104 L.Ed.2d 404 (1989).

When SCHUTTER, SEITZ, and McKENNA

testified as witnesses upon the direction of ALSTON in State Civil No. 88-0534-02, they waived their Fifth Amendment rights and attorney-client privileges. It was then clear that RYAN, as a lawyer, and the judges who have heard and reviewed their testimony, became possessors of "unprivileged" knowledge of violations of Disciplinary Rule 1-102, **Code of Professional Responsibility** (Appendix "F" hereto at pp. 53-54). The Verified Complaint (CR 1) is a lawyer's compliance with the duty imposed upon all lawyers and judges who become possessors of information of crimes and/or unethical practices by brother and sister lawyers.

The rejection of jurisdiction aborted the courts' duty to protect the public, the legal profession and the courts from criminal and/or unethical

use of the courts. It appears from the opinion written by Chief Judge Seitz in In re Eastern Sugar Antitrust Litigation, 697 F.2d 524 (3rd Cir. 1982), that complicated class actions are vehicles that can be used to conceal criminal and/or unethical use of the courts. Lawyers who disclose such criminal and/or unethical practices should not be punished via Rule 11, sanctions. Such hostile attacks upon a lawyer who is compelled by ethics to be a "whistle blower" enjoins the Rules of Professional Responsibility.

This Court should issue a writ of certiorari because this is where the "Buck stops" in the Judicial Branch of Government. If integrity, honesty, ethics and discipline cannot be found in the legal profession or the administration of justice, it will never be found in the streets, highways and

parks of the United States.

CONCLUSION

The Court is respectfully requested to grant the writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit, and for such other and further relief as is within the power of this Honorable Court.

DATED: Honolulu, Hawaii, May 5, 1994.

Respectfully submitted,

JOSEPH A. RYAN
4614 Kilauea Avenue,
Suite 559
Honolulu, Hawaii 96816
Telephone: (808) 734-2811

Petitioner, pro se

APPENDICES "A" TO "K"

Appendix "A"

Filed in the
United States District Court
District of Hawaii
June 04, 1992
2 o'clock and 15 min. P.M.
Walter A.Y.H. Chinn, Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JOSEPH A. RYAN,	)	Civil No. 92-00160 HMF
Plaintiff,	)	
vs.	)	
DAVID C. SCHUTTER, ERIC A. SEITZ, PAUL ALSTON, MARY LOU McKENNA, and DOE DEFENDANTS 1-100,	)	
Defendants.	)	

ORDER GRANTING MOTION TO DISMISS;
AWARDING RULE 11 SANCTIONS

INTRODUCTION

On May 26, 1992, the court held a hearing on a motion to dismiss complaint for lack of jurisdiction filed by defendants on April 3, 1992. Plaintiff filed an opposition on April 23,

1992.

BACKGROUND

In February 1983, Mary Lou McKenna invested $75,000 in the firm of Bishop, Baldwin, Dillingham, Rewald, and Wong (The "Rewald firm"). Shortly thereafter, she retained attorney D. Alden Newland in connection with the collection of monies from a California property transaction. Newland collected $71,246.75 for McKenna in April of 1983 and immediately invested that sum, on her behalf, in the Rewald firm. Unbeknownst to McKenna, Newland was an attorney for, and an active participant in, the Rewald firm. When the Rewald firm collapsed in August of 1983, plaintiff lost her investments.

In 1984, McKenna retained Joseph Ryan, the instant plaintiff, and the law firm of Ryan and Ryan, to recoup her lost investments. Ryan filed a

lawsuit on McKenna's behalf in state court. He only made a claim, however, for the $71,246.75 which Newland had invested for McKenna, making no claim against Newland to recoup McKenna's original $75,000 investment. Ryan also did not demand a jury trial.

At some point, McKenna became dissatisfied with Ryan's representation and took her case to attorney David Schutter. Upon entering the case, Schutter tried, unsuccessfully, to obtain a jury trial and to pursue claims for McKenna's original investment.

In April of 1986, the case was tried before the Honorable Melvin Soong, then Acting Circuit Judge. Following an extended trial, Judge Soong took the matter under submission, but before he issued any findings, a federal class action, Bush, et al. v.

Rewald, et al., Civil No. 84-0881, intervened and all pending state cases were stayed. Judge Soong never ruled upon the merits of McKenna's claims against Newland.

Bush v. Rewald was a class action filed on behalf of all investors in the Rewald firm. Although not a named party, McKenna clearly was a member of the potential class. Newland was a named defendant. After the class action had been pending for two years, Newland's insurance company filed a cross-claim for interpleader on behalf of Newland and two other named defendants. The plaintiff class representatives answered the interpleader cross-claim, and, thereafter, the parties and their counsel engaged in extensive settlement discussions culminating in the certification of a mandatory class and an obligatory settlement which was

imposed on all class members, including McKenna.

At this point, McKenna terminated the Schutter law firm and retained her present attorney, Mr. Seitz. She then filed timely objections to the mandatory class certification and settlement and appealed to the Ninth Circuit where her objections were overruled. Because she was the only appealing party, McKenna was effectively preventing a payout of approximately $1.2 million under the terms of the mandatory settlement.

In late 1986, McKenna reached a settlement of her appeal under the terms of which it was agreed that she would be paid the entire amount of her second investment, or approximately $71,000. The basis for this settlement was that she was to be "made whole" as if her state court case had proceeded

to a judgment in her favor on the one viable claim brought by Mr. Ryan. It was understood, however, that upon recouping this amount from the interpleader settlement, McKenna would be free to pursue any remaining remedies against her former lawyers.

Upon the withdrawal of her appeal, Ms. McKenna received payments totalling $73,395. Subsequently, McKenna received an additional payment from the Rewald bankruptcy proceedings in the amount of $16,952.24. Finally, after negotiating with David Schutter as to claims arising from his handling of the state court proceedings, McKenna received a further payment of $5,000 and a waiver of any costs and fees due to the Schutter law firm.

Following these payments, McKenna initiated a malpractice action in state court against Mr. Ryan and Ryan & Ryan

for malpractice to collect the balance of her lost investments. Ryan filed a motion for summary judgment which was denied by Judge Klein.

Thereafter, Ryan filed cross-claims, third party claims, and a lawsuit in federal court in which he sought to enjoin the state court proceeding. Ryan's cross claims were dismissed, his motion to file a third-party complaint was denied, and his federal lawsuit was stayed pending the outcome of the state court malpractice case. In August of 1991, a jury found that Ryan had committed malpractice in his representation of McKenna and awarded damages. Ryan filed several rounds of post-trial motions and the verdict was modified to some extent. Ryan then appealed.

Ryan has also brought detailed complaints to the Office of Discipli-

nary Counsel of the Hawaii Supreme Court, arguing that Seitz violated the Code of Professional Responsibility by filing malpractice claims against him. Those claims were not sustained and Ryan has petitioned to the Hawaii Supreme Court for a hearing, adding the Disciplinary Counsel as a party.

Finally, Ryan brought the instant federal action against defendants Schutter, Seitz, Alston and McKenna claiming that they conspired to commit commercial bribery and to conceal their crime by accusing plaintiff of professional malpractice. Ryan has sent a letter and a copy of this complaint to the Judiciary Committee of the United States Senate and others alleging that the instant defendants, as well as several state and federal judges, have committed criminal acts and are part of a broad conspiracy to poison the

administration of justice.

DISCUSSION

I. DEFENDANTS' MOTION TO DISMISS.

Plaintiff presents several rather confusing claims for which the issue of standing is questionable. In addition, it does not appear that any of these claims has a sufficient federal nexus to create jurisdiction in this court.

The essence of plaintiff's complaint is that defendants Schutter, Seitz, Alston and McKenna conspired to commit commercial bribery and to conceal their crime by accusing plaintiff of professional malpractice. The injury apparently suffered by plaintiff was that he was sued for malpractice in state court. Plaintiff claims that this state lawsuit was

> a violation of the Supreme Law of the Land clause as well as a contempt of the aforesaid injunction issued under the Federal Interpleader laws, and became a

> malicious prosecution and a violation of Plaintiff's constitutional right to the equal protection of the law and due process of law as guaranteed by Amendment XIV of the U.S. Constitution.

In fact, the only cognizable claims that plaintiff may have are those under state law for malicious prosecution, defamation, and perhaps intentional or negligent infliction of emotional distress. To the extent that plaintiff is attempting to bring such state law claims in federal court, there is no basis for federal jurisdiction. To the extent that plaintiff is attempting to act as a private attorney general in the prosecution of defendants for commercial bribery, he has no standing to bring such claims, and certainly no jurisdiction to bring them in this court.

Accordingly, plaintiff's complaint is DISMISSED for lack of subject matter

jurisdiction and for lack of standing as to the claims which do not directly relate to any injury suffered by plaintiff.

II. RULE 11 SANCTIONS.

Both parties request Rule 11 sanctions against one and other. Fed. R. Civ. P. 11 provides in pertinent part that:

> The signature of an attorney or party constitutes a certificate that the signer has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation . . . . If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction . . . .

Rule 11 addresses two separate problems: "first, the problem of frivolous filings; and second, the problem of misusing judicial procedures as a weapon for personal or economic harassment." Lemos v. Fencl, 828 F.2d 616, 618 (9th Cir. 1987); Zaldivar v. City of Los Angeles, 780 F.2d 823, 830 (9th Cir. 1986).

A filing is frivolous under Rule 11 if it is unreasonable when viewed from the perspective of "a competent attorney admitted to practice before the district court." Id. In Zaldivar, the Ninth Circuit Court of Appeals held that "Rule 11 sanctions shall be assessed if the paper filed in district court and signed by an attorney or an unrepresented party is frivolous, legally unreasonable, or without factual foundation, even though the paper was not filed in subjective bad

faith." Id. at 831.

Rule 11 sanctions are also appropriate when a filing is a misuse of judicial procedures. The standard under this "improper purpose" clause is also one of reasonableness. Objectively viewed, the filing must not be filed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. Id. This includes filings which are made solely to introduce matters not properly before the court.

The court finds that the instant complaint was filed solely to introduce matters not properly before this court. The court further finds that the instant complaint is unreasonable from the viewpoint of a competent attorney admitted to practice before this court. The court holds, therefore, that pro se plaintiff Mr. Ryan, (who, inci-

dentally, is an attorney) has violated Rule 11.

"Once a court finds that an attorney has violated Rule 11, it must impose sanctions." Unioil, Inc. v. E.F. Hutton, 809 F.2d 548, 559 (9th Cir. 1986), cert.denied sub nom. Barton v. E.F. Hutton, 108 S.Ct. (1987); Zaldivar, 780 F.2d at 831. Sanctions must, however, be "appropriate." An appropriate sanctions is one that is reasonable in scope and in amount, one that will deter future sanctionable conduct but will not act to chill "an attorney's enthusiasm or creativity in pursuing factual or legal theories." Matter of Yagman, 796 F.2d 1165, 1182-1184 (9th Cir. 1986), cert. denied sub nom. Real v. Yagman, 108 S.Ct. 450 (1987).

The court finds that the appro-

priate measure of sanctions in this case is the amount of costs and fees incurred by defendants to oppose this lawsuit. The court accepts the affidavit of Eric A. Seitz, filed on May 26, 1992, as the true and accurate accounting of this amount, finds the amount to be reasonable, and, hereby, sanctions plaintiff in the amount of $1,668.85 under Fed. R. Civ. P. 11.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, JUN 4, 1992.

/s/ Harold M. Fong
UNITED STATES DISTRICT JUDGE



Appendix "B"

F I L E D
DEC 13 1993
Cathy A. Catterson, Clerk
U.S. Court of Appeals

NOT FOR PUBLICATION

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH A. RYAN,	)	NO. 92-16102
	)	
Plaintiff-Appellant,	)	D.C.NO. CV-92-00160-HMF
	)	
v.	)	
	)	
DAVID C. SCHUTTER, et al.,	)	
	)	
Defendants-Appellees.	)	**MEMORANDUM***
	)	

Appeal from the United States District Court for the District of Hawaii
Harold M. Fong, District Judge, Presiding

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Submitted November 4, 1993 **
Honolulu, Hawaii

Before: POOLE WIGGINS, and T.G. NELSON, Circuit Judges.

Attorney Joseph A. Ryan appeals pro se the district court's dismissal of his action against a former client, her attorneys, the president of the Hawaii state bar association, and various Doe defendants. The district court dismissed the action for lack of subject matter jurisdiction and imposed sanctions in the amount of $1,668.85, the amount of attorney's fees and costs incurred by the defendants in this action.

We review de novo the district court's dismissal for lack of subject matter jurisdiction. Kruso v. Inter-

---

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

national Tel. & Tel. Corp., 872 F.2d 1416, 1421 (9th Cir. 1989), cert. denied, 496 U.S. 937 (1990). We review the imposition of sanctions pursuant to Fed. R. Civ. P. 11 for an abuse of discretion. Cooter & Gell v. Hartmarx, 496 U.S. 384, 405 (1990). We affirm.

I

In his complaint, Ryan asserted that the defendants conspired to commit "commercial bribery" and covered up their crime by suing him for malpractice in state courts. This conduct, Ryan claimed, subjected him to emotional distress, harmed his reputation, and constituted malicious prosecution and negligence.

The district court properly dismissed the action for lack of subject matter jurisdiction. Ryan's claims are state law claims for emotional dis-

tress, harm to reputation, malicious prosecution, and negligence which provide no basis for federal subject matter jurisdiction. Moreover, Ryan essentially asks this court to review the state court's judgment in the malpractice proceedings, which is impermissible under the Rooker/Feldman doctrine. See MacKay v. Pfiel, 827 F.2d 540, 543-45 (9th Cir. 1987).

Ryan argues that federal jurisdiction exists because a prior federal class action suit, Bush v. Rewald, disposed of his former client's claims and bars her malpractice suit against him. He raised this as a defense in the state malpractice proceedings and in a prior federal action seeking to enjoin the state court proceedings, which was stayed pending resolution of the state court proceedings. Because Ryan already raised this argument in

his prior federal action seeking to enjoin the state proceedings, raising it again is duplicative to the extent that Ryan wants to enjoin the state proceedings. Moreover, Ryan apparently does not want to enjoin any state proceedings but instead raises the Bush v. Rewald argument to show that the defendants maliciously sued him in state court. Thus, he presents it only as evidence in support of his state tort claims, and the district court properly determined that it lacked federal subject matter jurisdiction.

II

Ryan appeals the district court's imposition of Rule 11 sanctions of $1,668.85, the amount of attorney's fees and costs incurred by the defendants.

Under Rule 11, sanctions must be imposed for (1) frivolous filings and

(2) filings for an improper purpose. Townsend v. Holman Consulting Corp., 929 F.2d 1358, 1362 (9th Cir. 1991) (en banc). Because Ryan filed a frivolous action, the district court did not abuse its discretion by imposing Rule 11 sanctions.

III

The defendants request that this court impose sanctions against Ryan for filing a frivolous appeal.

This court may impose damages as a sanction for filing a frivolous appeal. Fed. R. App. P. 38; Wilcox v. Commissioner, 848 F.2d 1007, 1009 (9th Cir. 1988). An appeal is frivolous if the result is obvious or the arguments are wholly without merit. Wilcox, 848 F.2d at 1009. Ryan's appeal is frivolous, and we award damages to the appellees in the amount of their attorney's fees plus single costs.

AFFIRMED.

TRUE COPY
Cathy A. Catterson
Clerk of Court
Attest

FEB 24 1994

By: /s/ Juanja Ross
Deputy Clerk



Appendix "C"

F I L E D
MAR 23 1994
Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH A. RYAN,	)	NO. 92-16102
	)	
Plaintiff-Appellant,	)	D.C.NO. CV-92-00160-HMF
	)	Hawaii (Honolulu)
v.	)	
	)	
DAVID C. SCHUTTER, et al.,	)	
	)	
Defendants-Appellees.	)	ORDER
	)	

Appellees unopposed application for attorneys' fees on appeal is granted. Fees are awarded in the amount of $1250.00.

For the Court:

/s/ Roxane Eppes
Roxane Eppes
Motions Attorney/Deputy Clerk
Local Rule 27-7

M.Orders/march94



Appendix "D"

F I L E D
FEB 16 1994
Cathy A. Catterson, Clerk
U.S. Court of Appeals

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH A. RYAN,	)	NO. 92-16102
	)	
Plaintiff-Appellant,	)	D.C.NO. CV-92-00160-HMF
	)	D. Hawaii
v.	)	
	)	
DAVID C. SCHUTTER, et al.,	)	
	)	
Defendants-Appellees.	)	ORDER
	)	

Before: POOLE, WIGGINS, and T. G. NELSON, Circuit Judges.

The panel has voted to deny Ryan's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied, and the suggestion for rehearing en banc is rejected.

Appendix "E"

JUDGMENT

FEB 24 1994
MANDATE ISSUED

Filed in the
United States District Court
District of Hawaii
FEB 28 1994
at 9 o'clock and 15 min. A.M.
Walter A.Y.H. Chinn, Clerk

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NO. 92-16102
CT/AG#: CV-92-00160-HMF

JOSEPH A. RYAN

Plaintiff-Appellant

v.

DAVID C. SCHUTTER,et al.

Defendants-Appellees.

APPEAL FROM the United States District Court for the District of Hawaii (Honolulu).

THIS CAUSE came on to be heard on

the Transcript of the Record from the United States District Court for the District of Hawaii (Honolulu) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered December 13, 1993

TRUE COPY
Cathy A. Catterson
Clerk of Court
Attest

FEB 24 1994

By: /s/ Juanja Ross
Deputy Clerk

Appendix "F"

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

ARTICLE VI., U.S. Constitution

Clause 2. Supreme law. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Clause 3. Oath of office. The Senators and Representative before mentioned and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or

Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or Public Trust under the United States.

UNITED STATES CODE

18 United States Code:

Section 2. Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

Section 3. Accessory after the fact.

Whoever, knowing that an offense against the United States has been

committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by life imprisonment or death, the accessory shall be imprisoned not more than 15 years.

Section 241. Conspiracy against rights.

If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise of enjoyment of any right or

privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured --

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

Section 371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one

or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punisnment provided for such misdemeanor.

Section 401. Power of court.

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none others, as --

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transac-

tions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

Section 402. Contempts constituting crimes.

Any person, corporation or association willfully disobeying any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden, if the act or thing so done be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed, shall be prosecuted for such contempt as provided in section 3691 of this title and shall be punished by fine or imprisonment, or both.

Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months.

This section shall not be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but

the same, and all other cases of contempt not specifically embraced in this section may be punished in conformity to the prevailing usages at law.

For purposes of this section, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

Section 1341. Frauds and swindles.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or

other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

Section 1512. Tampering with a witness, victim, or an informant

(b) Whoever knowingly uses intimidation or physical force, threatens or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to --

(1) influence, delay or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to --

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense . . . ;

shall be fined not more than $250,000 or imprisoned not more than ten years, or both.

(c) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from --

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense . . . ;

. . .

or attempts to do so, shall be fined not more than $25,000 or imprisoned not more than one year, or both.

(d) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(e) For the purposes of this section --

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

. . .

(g) There is extraterritorial Federal jurisdiction over an offense under this section.

(h) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

28 United States Code

Section 1291. Final decisions of district courts.

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title [28 USCS Sections 1292(c),(d), 1295].

Section 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective

jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

Section 1654. Appearance personally or by counsel.

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

Section 2071. Rule-making power generally.

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section

2072 of this title.

(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

(c)(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

(f) No rule may be prescribed by a district court other than under this section.

Section 2283. Stay of State court proceedings.

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Section 2361. Process and procedure.

In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United Staes court affecting the property, instrument or obligation involved in the interpleader action until further order of the court. Such process and order shall be returnable

at such time as the court or judge thereof directs, and shall be addressed to and served by the United States marshals for the respective districts where the claimants reside or may be found.

Such district court shall hear and determine the case, and may discharge the plaintiff from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment.

HAWAII REVISED STATUTES

Section 708-880. Commercial bribery.

(1) A person commits the offense of commercial bribery if:

(a) He confers or offers or agrees to confer, directly or indirectly, any benefit upon:

(i) An agent with intent to influence the agent to act contrary to

a duty to which, as an agent, he is subject; or

(ii) An appraiser with intent to influence the appraiser in his selection, appraisal, or criticism; or

(b) Being an agent, an appraiser, or agent in charge of employment, he solicits, accepts, or agrees to accept, directly or indirectly, any benefit from another person with intent:

(i) In the case of an agent, that he will thereby be influenced to act contrary to a duty to which, as an agent, he is subject; or

(ii) In the case of an appraiser, that he will thereby be influenced in his selection, appraisal, or criticism; or

(iii) In the case of an agent in charge of employment, that he will tnereby be influenced in the exer-

cise of his discretion or power with respect to hiring someone, or retaining someone in employment, or discharging or suspending someone from employment.

(2) In this section:

(a) "Agent" means:

(i) An agent or employee of another;

(ii) A trustee, guardian, or other fiduciary;

(iii) A lawyer, physician, accountant, appraiser, or other professional adviser or informant;

(iv) An officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or

(v) An arbitrator or other purportedly disinterested adjudicator or referee;

(b) "Appraiser" means a person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services;

(c) "Agent in charge of employment" does not include any person conducting a private employment agency licensed and operating in accordance with law.

(3) Commercial bribery is a misdemeanor, except in the event that the value of the benefit referred to in subsection (1) exceeds $1,000, in which case commercial bribery shall be a class C felony.

LOCAL RULES OF THE
U.S. DISTRICT COURT (HAWAII)

Local Rule 110-3. Standard of Professional Conduct.

Every member of the bar of this court and any attorney permitted to practice in this court pursuant to L.R.

110-1(d) shall be governed by and shall observe the standards of professional and ethical conduct required of members of the Hawaii State Bar.

CODE OF PROFESSIONAL RESPONSIBILITY
The Judiciary, State of Hawaii

Disciplinary Rules

DR 1-102 Misconduct.

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness

to practice law.

(7) Hold membership in any organization that practices invidious discrimination on the basis of sex, race, religion or national origin.

DR 1-103 Disclosure of Information to Authorities.

(A) A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

DR 5-101 Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.

(B) A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case.

DR 5-102 Withdrawal as Counsel When the Lawyer Becomes a Witness.

(A) If, after undertaking employ-

ment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5-101 (B)(1) through (4).

(B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm may be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client.

Appendix "G"

Filed in the
United States District Court
District of Hawaii
SEP 4 1986
at 11 o'clock and 20 min. A.M.
Walter A.Y.H. Chinn, Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

CONRAD BRYSON BUSH, et al.,	)	Civ.No. 84 0881
Plaintiffs,	)	
vs.	)	
RONALD R. REWALD, et al.,	)	
Defendants.	)	
ILLINOIS UNION INSURANCE COMPANY, an Illinois Corporation,	)	(Related Interpleader Action)
Plaintiffs,	)	
vs.	)	
CONRAD BRYSON BUSH, et al.,	)	
Defendants.	)	

FINAL ORDER AND JUDGMENT (1) GRANTING PERMANENT CERTIFICATION TO MANDATORY CLASS FOR SETTLEMENT PURPOSES, (2) GRANTING FINAL APPROVAL TO PARTIAL

SETTLEMENTS WITH NEWLAND, LAM, AND JOLLY, (3) DISMISSING AND RELEASING SETTLEMENT CLASS CLAIMS AGAINST NEWLAND, LAM AND JOLLY, (4) APPROVING GENERAL PLAN OF ALLOCATION SET FORTH IN ANSWER TO COMPLAINT FOR INTERPLEADER, AND INSTRUCTING BBRD&W BANKRUPTCY TRUSTEE TO PREPARE DISTRIBUTION PROPOSAL, (5) DISCHARGING ILLINOIS UNION INSURANCE COMPANY, AND (6) PERMANENTLY ENJOINING OTHER PROCEEDINGS

Counsel for Individual and Representative Plaintiffs, the BBRD&W Trustee, Settling Defendants GERALD N.Y.C. LAM ("LAM"), D. ALDEN NEWLAND ("NEWLAND") and WILLIAM JOLLY ("JOLLY"), and for their professional liability insurer, ILLINOIS UNION INSURANCE COMPANY ("ILLINOIS UNION"), have reached agreements for the settlement of this action, and for the release and dismissal of the claims of all members of a settlement class including all BBRD&W investors, with respect to claims against these Defendants. On July 31, 1986, pursuant to

submisson of pleadings and papers, and to consideration of the arguments of counsel for interested parties at a preliminary approval hearing, this Court entered its Order: (1) certifying mandatory class for settlement purposes, (2) granting preliminary approval for partial settlement, (3) approving class notice, (4) enjoining other proceedings.

Subsequent to preliminary approval of these matters, counsel for Plaintiffs disseminated a Court approved "Notice of Partial Settlements" to all known members of the settlement class. This Notice summarized the settlement terms and the settlement approval procedure, and gave class members notice of the final approval hearing, which was held on September 4, 1986, at 9:30 a.m.

Additionally, Plaintiffs filed

moving papers and supporting memoranda in support of mandatory certification, final approval, injunction, and interpleader, in connection with both the preliminary and final hearings. Settlement class member MARY LOU McKENNA appeared through counsel, and filed a formal objection to her inclusion in the settlement class on a mandatory basis, and to the injunction of her pending state court proceeding.

This Court has reviewed and considered the written submissions and oral arguments made in connection with the subject matter of this Order. Having done so, and good cause appearing to the satisfaction of this Court, the following findings and Orders are made.

MANDATORY CLASS CERTIFICATION

This Court's July 31, 1986, Order included the certification, for pur-

poses of implementing and enforcing the Proposed Settlement Agreements with NEWLAND, LAM, and JOLLY only, of the settlement class on a mandatory basis under F.R.C.P. 23(a), 23(b)(1)(A), 23(b)(1)(B), 23(d), and 23(e). The certified settlement class was defined as follows: "All similarly situated individuals and/or entities who invested in, with, or through BBRD&W, directly or indirectly, with respect to these and any or all other investments made by such individuals and/or entities through Settling Defendants, and who have suffered economic and other losses as a result thereof."

This certification was made pursuant to the findings included in the July 31, 1986, Order, which shall not be repeated. In sum, the Court found that the applicable requirements of F.R.C.P. 23 with respect to certifica-

tion in general, and mandatory certification in particular, were met. Nothing which has been submitted since by way of authority or argument has altered this finding. Moreover, all class members were given an opportunity, pursuant to class notice, to object to this certification. Other than the McKENNA objection, no formal written objection has been registered.

Accordingly, IT IS HEREBY ORDERED that the above-defined settlement class is hereby certified, on a permanent basis, for purposes of implementing and enforcing the Proposed Settlement Agreement, on a mandatory basis, as against Settling Defendants LAM, NEW-LAND, and JOLLY only.

IT IS FURTHER ORDERED that the Individual and Representative Plaintiffs and law firms listed on pages 9 and 10 of this Court's July 31, 1986,

Order, are confirmed as class representatives and class counsel.

FINAL APPROVAL OF PARTIAL SETTLEMENTS WITH NEWLAND, LAM, AND JOLLY

The Manual for Complex Litigation 2d (1985), directs that "in determining whether a class settlement should be approved, the Court must decide whether the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued." Manual for Complex Litigation 2d, Section 30.44. The specific criteria for final settlement approval, under the Manual for Complex Litigation 2d, and as articulated by other cases and commentators, were discussed in Plaintiffs' Memorandum of Points and Authorities in Support of Final Approval. In general, the Court agrees with the arguments of the settlements' support-

ers in these respects.

The settlement is inescapably fair, reasonable, and adequate under the circumstances of this case: the existence of a limited fund of insurance proceeds, and the competition which would continue to rage, in the absence of settlement, for priority judgments to be levied against these limited assets. The settlements constitute over 88% of the maximum available under these Defendants' three policies. They must accordingly be considered reasonable and adequate.

Here, only a settlement which includes, on a mandatory basis, all potential claimants with similar claims, and provides for an overall system of allocation, can be fair. Defendants' testimony, and the representations of Defendants' counsel, with respect to the lack of substantial

assets other than these policies demonstrates Defendants' inability to pay a greater amount. The need of the Plaintiffs for immediate relief is likewise obvious under the circumstances of the litigation, in which claims have been pending since August, 1984, and in which three years have passed since the demise of the BBRD&W itself in August, 1983.

For these reasons, the proposed settlements are not only fair, adequate, and reasonable under the circumstances, but are, in fact, necessary to preserve, for the benefit of the class as a whole, the proceeds of the Illinois Union Liability Insurance Policies.

IT IS HEREBY ORDERED that the following settlements be, and hereby are, granted final approval, for the benefit of the certified settlement

class as defined herein above, including objector MARY LOU McKENNA:

Settling Defendant	Settlement Amount
GERALD N.Y.C. LAM	$ 751,500.00
WILLIAM JOLLY	100,000.00
D. ALDEN NEWLAND	350,000.00
TOTAL	$1,201,500.00

DISMISSAL AND RELEASE OF CLASS CLAIMS

The purpose of the settlement agreement, the mandatory class certification, and the permanent injunction (discussed and issued herein below), is to obtain a meaningful universal release for Settling Defendants with respect to class claims.

The release and dismissal language is set forth, in detail, in the attached Settlement, Release and Indemnity Agreement, which is granted final approval. Upon the satisfaction of the terms and conditions of said Agreement,

IT IS HEREBY ORDERED that all claims by members of the settlement class against Settling Defendants be, and hereby are, released and dismissed as set forth in said Agreement. This Court will retain continuing jurisdiction to construe, interpret, and enforce the Agreement, and to preside over the allocation and distribution of settlement funds thereunder.

ALLOCATION OF SETTLEMENT PROCEEDS

In their Answer to the Complaint for Interpleader, the Settlement Class Claimants propose that the BBRD&W bankruptcy Trustee be granted custody of the settlement funds (after any award of attorneys fees and costs to class counsel) and that the Trustee utilize his records to prepare and propose a plan of allocation and schedule for distribution of settlement proceeds among settlement class

members. The settlement fund would be maintained, at interest, for the benefit of the members of the settlement class, separate and apart from any assets of the BBRD&W estate, and it would be insulated from deduction for costs of administration, or bankruptcy fees.

Claimants have asked that this Court assign a Magistrate or Special Master to deal with any disputes arising from particular allocations or distributions. This is probably necessary because of past disputes between some BBRD&W investors and the BBRD&W trustee regarding characterization of claims. This Court's continuing jurisdiction should solve any problems which arise during the allocation process.

The allocation would be based upon a pro rata division of the available settlement fund among claimants based

upon their respective unrecovered principle investments. One exception to this general allocation rule would be the allocation to the Plaintiffs in the Brown, Brug, Wallace, and McKenna-Moran state court civil actions; this Court has already granted preliminary approval to an allocation of twice the basic pro rata share to each of these Plaintiffs which is hereby granted final approval.

IT IS HEREBY ORDERED that ILLINOIS UNION shall immediately pay to the Order of the Court settlement proceeds in the total amount of $1,201,500.00. If ILLINOIS UNION has already paid these funds into Court, they shall be placed by the Clerk, at interest, in trust, for the benefit of the members of the settlement class, in an F.D.I.C. or F.S.L.I.C. insured institution, or otherwise as the Court may permit. No

transfer of any portion of the Settlement fund shall be made by the Clerk to the Trustee until this Order is final; that is, until the time for appeal has passed, or any appeal has been resolved. If the Settlement is not fully implemented, the funds shall be returned, with accrued interest, to ILLINOIS UNION. Upon finality, the funds shall be transferred to the Trustee.

IT IS FURTHER ORDERED that within 60 days, or such other reasonable time as the BBRD&W Trustee may require, the BBRD&W Trustee shall prepare and submit a Proposed Plan of Allocation and Schedule of Distribution for approval by this Court. Counsel of record shall be served with copies of said Plan, and any and all pleadings and papers filed in support thereof, and shall be given an opportunity to comment upon or

object to the Plan or any portion thereof before it is granted final approval by this Court. Said Plan and Schedule should include a member-by-member list of the members of the settlement class and the amount to be allocated to each under the Plan and Schedule. The Plan should also detail a procedure for resolving disputes along the lines set forth herein above.

DISCHARGE OF PLAINTIFF IN INTERPLEADER

On July 31, 1986, immediately after the filing of this Court's Preliminary Approval Order, ILLINOIS UNION filed, as Plaintiff, its Complaint for Interpleader with respect to the settlement proceeds. The settlement class has answered this Interpleader as "Settlement Class Claimants" by admitting its charging allegations, and by proposing the plan of allocation set forth herein above. Upon the comple-

tion of payment over to the Court, and/or the BBRD&W bankruptcy trustee, and unless the Settlement is not fully implemented, IT IS HEREBY ORDERED that ILLINOIS UNION be, and hereby is, discharged, released, and dismissed with respect to any and all liability arising from the claims which were asserted or which could have been asserted by class members herein, or which have been or could be asserted by class members against the ILLINOIS UNION, NEWLAND, LAM, and JOLLY policies.

PERMANENT INJUNCTION

As part of its July 31, 1986, Order, this Court issued a temporary injunction as follows: "Any and all proceedings, rulings, determinations, order, or judgments, in any federal or state court, to the extent they involve or affect the claims of any class member, party, claimant, or third party

claimant against settling Defendants LAM and JOLLY, or either of them or of any class member claimant against Settling Defendant NEWLAND, and/or against ILLINOIS UNION, are hereby stayed or enjoined, until further order of this Court, pursuant to 28 U.S.C., Section 1651 and/or 28 U.S.C., Section 2361, including without limitation, the following:

(a) David L. Brown and Karin Brown v. Lam, Civil No.84-1261 (1st Cir. Ct., State of Hawaii);

(b) Patricia Brug v. Sali Toda and Prudential Bache v. Lam, Newland, Sunlin Wong, and Signori, Civil No. 83-084 (1st Cir. Ct., State of Hawaii);

(c) Daniel F. Wallace, et al. v. Sunlin L.S. Wong, William E. Jolly, State of Hawaii, et al., Civil No. 78881 (1st Cir. Ct., State of Hawaii);

(d) Harry Kunimune, et al. v.

Sunlin L.S. Wong, et al., U.S.D.C. Hawaii, Civil No. 84-0832;

(e) McKenna-Moran v. D. Alden Newland and Newland, Black & Ige, Civil No. 82201 (1st Cir. Ct., State of Hawaii); and

(f) Reynaldo D. Graulty, Trustee of Bishop, Baldwin, Rewald, Dillingham & Wong v. Dana Wesley Smith, et al., Civil No. 85-2959 (1st Cir. Ct., State of Hawaii).

The Court has read the pleadings and papers, and considered the arguments advanced, in connection with the settlement class' request for a Permanent Injunction on the above-referenced proceedings. This Court is satisfied that it possesses the authority and discretion to grant such an injunction under 28 U.S.C. Sections 1651, 2283, and 2361, and as supported by the following authorities: In re Baldwin-

United Corp., 770 F.2d 328 (2d Cir. 1985); James v. Bellotti, 733 F.2d 989 (1st Cir. 1984); In re Dennis Greenman Securities Litigation, 622 F.Supp. 1430, 1442-1444 (S.D. Fla. 1985).

IT IS HEREBY ORDERED that the continuance and/or prosecution of each of the above-referenced actions be, and hereby is, permanently enjoined with respect to claims, cross-claims, and/or counterclaims against Settling Defendants NEWLAND, LAM, and JOLLY.

IT IS FURTHER ORDERED that the commencement or maintenance of this or any other federal or state court proceedings, to the extent they include claims asserted by members of the settlement class against Settling Defendants NEWLAND, LAM, and JOLLY, and/or other claims against said Defendants arising out of or based upon

such claims, are hereby enjoined.

DISMISSAL OF CROSS-CLAIMS

IT IS HEREBY ORDERED that any and all cross-claims, or other claims asserted herein by or against Settling Defendants are dismissed with prejudice.

CERTIFICATION OF FINALITY

The Orders and Judgments contained herein are final under F.R.C.P. 54(b). The Court expressly determines that there is no just reason for delay, and hereby directs the entry of this Order as a Final Judgment of the Court.

DATED: Honolulu, Hawaii, Sept. 4, 1986.

/s/ Martin Pence
MARTIN PENCE
United States District Judge

Appendix "H"

Filed in the
United States District Court
District of Hawaii
APR 20 1987
at 2 o'clock and 00 min. P.M.
Walter A.Y.H. Chinn, Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

CONRAD BRYSON BUSH, et al.,	)	Civ.No. 84-0881
Plaintiffs,	)	STIPULATION AND ORDER RE COMPROMISE OF McKENNA OBJECTION AND CLASS ACTION SETTLEMENT FUND ALLOCATION
vs.	)	
RONALD R. REWALD, et al.,	)	
Defendants.	)	

In order to avoid the delay, expense, and uncertainty presented by the appeal of putative Class member MARY LOU McKENNA to the settlement-related Orders of the above-entitled Court, to resolve the issue of the allocation of monies from the Class Action Fund, to bind MARY LOU McKENNA to the settlement-related Orders concluding the claims

against Settling Defendants GERALD LAM, D. ALDEN NEWLAND, and WILLIAM JOLLY, the parties hereto, by and through their respective counsel, the undersigned, do hereby stipulate and agree as follows:

1. The Settlement analysis as set forth in Exhibit A hereto is an accurate summary of the proposed and agreed allocation of the Bush v. Rewald class action Settlement Fund among the Class members, the Schutter clients, objector MARY LOU McKENNA, and their respective attorneys.

2. Under the instant compromise agreement, objector MARY LOU McKENNA shall receive a total of approximately $74,000, in consideration of her agreement to be bound by the settlement related orders, and the dismissal of her pending appeal. Of this sum, the subtotal of approximately $28,000 repre-

sents her anticipated pro rata allocation as a member of the Class under the Court's previous Orders. In addition, $23,000 will be deducted from the gross Settlement Fund, and an additional $23,000 will be deducted from the Class and Schutter clients' attorneys' fees to compensate McKENNA for her efforts in the prosecution of her individual action, McKenna-Moran v. D. Alden Newland and Newland, Black & Ige, Civil No. 82201 (1st Cir. Ct. State of Hawaii), through court trial.

3. As a result of the above-referenced deductions, the attorneys' fees and costs previously awarded to Class counsel shall be reduced to a total of $214,362 in fees and $65,698 in costs, for a reduced total of $280,377, to be apportioned among the respective firms as set forth on page 2 of Exhibit A hereto.

4. Objector MARY LOU McKENNA, who has agreed to the conditional dismissal of her appeal, No. 86-2948, in order to vest the District Court with jurisdiction to consider this stipulated compromise, hereby dismisses said appeal, with prejudice, upon the finality of the District Court's order of approval.

5. Upon the finality of the district court's Order of Approval, MARY LOU McKENNA shall be bound by all of the terms of the Final Order and Judgment filed herein on September 4, 1986, including all of the Exhibits thereto, and the Judgment on Decision by the court filed herein on November 13, 1986, including the Settlement Release and Indemnity Agreement attached thereto.

6. This Stipulation may be executed in counterparts.

DATED: March 27, 27, 1987

ERIC A. SEITZ
Attorney at Law
A Law Corporation

By /s/ Eric A. Seitz
ERIC A. SEITZ

Attorney for Appellant MARY LOU McKENNA

DATED: February 23, 1987

LIEFF & CABRASER
Attorneys at Law

By /s/ Elizabeth Joan Cabraser
ELIZABETH JOAN CABRASER

Attorneys for Appellees CONRAD BRYSON BUSH, et al. (Plaintiff Class)

DATED: March 27, 1987

WAGNER, WATSON & DiBIANCO

By /s/ James A. Wagner
JAMES A. WAGNER

Attorneys for BBRD&W Trustee

DATED: March 27, 1987

SCHUTTER, PLAYDON GLICKSTEIN

By /s/ Howard Glickstein
HOWARD GLICKSTEIN

Attorneys for certain class members

APPROVED AND SO ORDERED:

/s/ Martin Pence
Judge of the above-entitled Court

BUSH V. REWALD

SETTLEMENT ANALYSIS

TOTAL SETTLEMENT AS ORIGINALLY APPROVED		$1,201,500.
To Class	$ 967,609.	
To Schutter Clients	233,901.	
To McKenna	-0- .	
	$1,201,500.	

DISMISSAL OF APPEAL

Total Settlement	1,201,500.
To McKenna off top	(23,000.)
To Class & Schutter clients	$1,178,500.

SCHUTTER CLIENTS

Brown Investment	$ 461,000.
Brug Investment	146,000.
Wallace Investment	561,000.
9.733% of Total	$1,168,000.

McKenna Investment 1.162%	139,475.
	$1,307,475.

REVISED SETTLEMENT

To Class	$ 927,025.
To Schutter Clients	224,080.
To McKenna	27,395.
	$1,178,500.
Class Attorneys Fees (25% of $927,025)	$ 231,756.
Schutter Attorney Fees (1/3 of $224,080)	74,693.
Total Attorneys Fees	$ 306,449.
Less $23,000. to McKenna	(23,000.)
TOTAL ATTORNEYS FEES	$ 283,449.

Attorneys Fees - Prorated Reduction

To Class	$214,362.
To Schutter	69,087.
	$283,449.

Firm	Attorneys Fees	Costs	Total
Lieff & Cabraser	$127,331.	$43,947.	$171,278.
Tonsing & Heimann	10,804.	2,160.	12,964.
Hill, Schwartz & Stenson	71,447.	19,591.	91,355.
Dibianco	2,701.	-0-	2,701.
Leavitt	2,079.	-0-	2,079.
	$214,362.	$65,698.	$180,377.

RECAP:

Total to McKenna

From Settlement Itself	$27,395.
From Top of Settlement	23,000.
From Attorneys' Fees	23,000.
	$73,395.



Appendix "I"

SCHUTTER PLAYDON GLICKSTEIN

January 11, 1988

HAND DELIVERED

Eric Seitz, Esq.
820 Mililani Street, Suite 714
Honolulu, Hawaii 96813

RE: Mary Lou McKenna

Dear Mr. Seitz:

In accordance with your request, we are herewith transmitting our check for $5,000 to you and your client Mary Lou McKenna. This is done with the understanding and with your representation that you and your client will execute all appropriate documents in connection with the resolution of any and all outstanding claims which Ms. McKenna has or may have against David C. Schutter, Attorney At Law, A Law Corporation, and Schutter Playdon Glickstein, arising out of our representation of Ms. McKenna in her legal

action against D. Alden Newland. These documents, which will be forwarded shortly to you, will include a full and complete release, a joint tortfeasor release, and agreement to hold us harmless, defend us and indemnify us, all consistent with our previous understandings and agreements regarding this matter. Although our original agreement with your client was that we would only pay this amount upon our receipt of our attorney's fees from the Federal Court class action, we are, at your request, expediting this payment in order to satisfy your client's wishes.

Also enclosed please find a copy of our contingency fee agreement with Ms. McKenna, which will assist you in determining the amount of attorney's fees that we are waiving as part of our agreement with Ms. McKenna. Momentarily, we will forward to you an itemiza-

tion of the costs we incurred in pursuit of Ms. McKenna's claim. In as much as I am in trial now, please understand that the itemization of costs is basically coming directly from our ledger card, and will not have been reviewed in detail by me before reaching you.

If you have any questions, please give me a call.

Very truly yours,

/s/ Howard Glickstein

Howard Glickstein

SCHUTTER CAYETANO PLAYDON
Law Corporations

CONTINGENCY FEE CONTRACT AUTHORIZATION

Mary Lou McKenna, here called "Client(s)", do hereby retain and request Schutter Cayetano Playdon, Kawaiahao Plaza, 567 South King Street, Suite 618, Honolulu, Hawaii 96813, hereafter called "Attorneys", to represent Client(s) as legal counsel in connection with a claim for injuries, damages, or loss sustained by Client(s) from an accident or incident occurring on or about 8/1/83.

Representation shall be upon the following conditions:

1. Attorneys will devote their full professional abilities to the case and Client(s) agree(s) to cooperate fully with Attorneys.

2. Client(s) authorize(s) Attorneys or any of their employees or

agents to obtain any and all reports, records, billings, or other information which they may deem necessary to the proper handling of the case.

3. Client(s) agree(s) that Attorneys shall be compensated for services as follows:

(a) For any recovery obtained by Attorneys whether by settlement or jury verdict, compensation shall be 33 1/3 percent of any such recovery. In the event of a structured settlement compensation shall be 33 1/3 percent of the present cash value of any such structured settlement approved and accepted by Client(s).

(b) In the event that a notice of appeal is filed either by the other side from a favorable verdict for us or by us from an unfavorable result below, on any final favorable decision obtained from an appellate court or any

settlement that results after the filing of the notice of appeal, the compensation shall be 40 percent of any recovery.

(c) In the event that there has been an appeal from the original decision of the lower court, and as the result of such appeal, there is a new trial or new proceedings in the lower court, compensation shall then be 40 percent of any recovery obtained after remand from the appellate court.

4. Client(s) agree(s) that all costs which in any manner relate to the case shall be the responsibility of Client(s) and shall be paid by Client(s), or, in the event Attorneys advance said costs, Attorneys shall be reimbursed by Client(s). In this regard, "costs" are defined as all monies expended or debts incurred in any manner to or with any third parties

which are required or deemed necessary by Attorneys for the investigation and preparation and/or trial of the case.

5. Client(s) agree(s) to pay a cost retainer in the amount of $-0- to be applied toward such costs as Client(s) may be obligated to pay under the terms of paragraph 4 above. When such retainer is exhausted, Attorneys will bill Client(s) periodically for costs which may have been advanced by Attorneys. If costs have been advanced and not paid at the time of settlement or judgment, they will be deducted from Client(s)' share of such settlement or judgment.

6. Client(s) agree(s) that any bill for medical services rendered, other than for testimony, is Client(s) responsibility, and must be paid by Client(s).

7. Client(s) agree(s) that Attor-

Attorneys may employ investigative services in their preparation of the case, and Client(s) agree(s) that all costs of such investigation shall be paid by Client(s) under the provision of paragraph 4 above. Client(s) further agree(s) that should an investigator employed by Schutter Cayetano Playdon utilized, his time will be billed at the rate of $25.00 per hour, and the total charge will constitute a cost under the provisions of paragraph 4 above.

8. No settlement of Client(s)' claim may be made without Client(s)' permission and the permission of Attorneys.

9. Attorneys promise to use their best professional efforts in the handling of Client(s)' claim, but Client(s) understand(s) and agree(s) that Attorneys have made no promises or guaran-

tees regarding the result or outcome to be obtained in Client(s)' case.

10. Client(s) has (have) read this contract, received a copy of it, and agree(s) to the terms and conditions stated herein. There are no other agreements or understandings of any nature whatsoever, oral or written, relating to the case between Client(s) and Attorneys.

DATED: November 13, 1985.

By /s/ Janice E.C. Teramae
Attorney

/s/ Mary Lou McKenna
Client(s)' Signature

Mary Lou McKenna
Client(s)' Name Printed

2825 S. King St. #3304
Client(s)' Addres

944-1044
Client(s)' Phone Number

SCHUTTER PLAYDON GLICKSTEIN

January 12, 1988

Ms. Marylou McKenna
c/o Eric Seitz, Esq.
820 Mililani Street, Suite 714
Honolulu, Hawaii 96813

STATEMENT OF COSTS
RE: McKENNA VS. NEWLAND

Filing fees	$ 315.00
Depositions	9,659.74
Sheriff's fees	223.20
Medical records	26.00
Expert's time	6,435.20
Witness fees	132.00
Miscellaneous costs	7,184.52
TOTAL COSTS	$23,975.66

DCS
#88-000

Appendix "J"

1st Circuit Court
State of Hawaii
FILED
1988 FEB 22 PM 3:32
M. Tanaka
Clerk

LOWENTHAL, AUGUST,
GRAHAM & SEITZ

ERIC A. SEITZ 1412
JOAN M. YAMAGUCHI 4045
820 Mililani Street
Suite 714
Honolulu, Hawaii 96813
Telephone: (808) 533-7434

Attorneys for Plaintiff

IN THE CIRCUIT COURT
OF THE FIRST CIRCUIT

STATE OF HAWAII

MARY LOU McKENNA,	CIVIL NO. 88-0534-02
Plaintiff,	
vs.	COMPLAINT FOR DAMAGES; EXHIBIT "A";
JOSEPH RYAN and RYAN & RYAN, A LAW CORPORATION,	DEMAND FOR JURY TRIAL; and SUMMONS
Defendants.	

COMPLAINT FOR DAMAGES

MARY LOU McKENNA, by and through

her undersigned attorneys, alleges as follows:

(1) Plaintiff MARY LOU MCKENNA, at all times pertinent hereto, is and has been a resident of the City and County of Honolulu, State of Hawaii. Ms. MCKENNA presently resides at Big Bear Lake, California.

(2) Defendant JOSEPH RYAN is and has been a resident of the City and County of Honolulu, State of Hawaii, and was engaged in the practice of law as a partner in the law firm of RYAN & RYAN, A LAW CORPORATION at all times pertinent hereto.

(3) Defendant RYAN & RYAN, A LAW CORPORATION, is and was, at all times pertinent hereto, a professional corporation duly organized and licensed under the laws of the State of Hawaii and the Rules of the Supreme Court of the State of Hawaii with principal

offices located in Honolulu, Hawaii.

(4) In 1983 Plaintiff retained attorneys D. Alden Newland and the law firm of Newland, Black & Ige [hereinafter "Newland et al."] to advise, counsel and represent Plaintiff in connection with her business and personal affairs.

(5) Upon the advice and with the assistance of attorneys Newland et al., Plaintiff invested monies in an entity known as Bishop Baldwin Rewald Dillingham and Wong [hereinafter "Bishop-Baldwin"] on two separate occasions: the first investment of $75,000.00 [hereinafter "first investment"] was made in February, 1983, and the second investment of $71,246.75 [hereinafter "second investment"] was made in April, 1983.

(6) On or about August 1, 1983, Bishop-Baldwin collapsed, and Plain-

tiff's aforementioned investments were wholly lost.

(7) After Bishop-Baldwin's collapse Plaintiff learned that attorneys Newland et al. simultaneously had represented Bishop-Baldwin while those same attorneys purported to represent, counsel and advise Plaintiff.

(8) In late 1984, Plaintiff retained Defendants JOSEPH RYAN and RYAN AND RYAN, A LAW CORPORATION [hereinafter "Defendants RYAN"] to file litigation and recoup her lost investments from attorneys Newland et al. because of their apparent conflict of interests in representing both Plaintiff and Bishop-Baldwin.

(9) On or about March 27, 1984, Defendants RYAN prepared and filed a lawsuit against attorneys Newland et al. in which Defendants RYAN asserted a claim only for Plaintiff's second in-

vestment in Bishop-Baldwin but neglected to make any claims for Plaintiff's first investment. A copy of the Complaint filed by Defendants RYAN in Civil No. 82201, Circuit Court of the First Circuit, State of Hawaii, is attached hereto as Exhibit A.

(10) At the time they filed the Complaint in Civil No. 82201 Defendants RYAN had been informed by Plaintiff and knew that the very same conflicts of interest and legal obligations underlying the claim for Ms. MCKENNA's second investment applied similarly to her first investment and to the potential liability of attorneys Newland et al. therefor.

(11) Defendants RYAN also failed to make any demand for a jury trial in Civil No. 82201 although Plaintiff MCKENNA always wanted and expected a jury trial.

(12) Plaintiff dismissed Defendants RYAN as her attorneys in Civil No. 82201 prior to the trial of that matter and retained new counsel.

(13) Plaintiff's new attorneys filed and argued a written motion for jury trial, but the Court ruled that Plaintiff's right thereto had been waived because she had failed to make a timely demand for a jury trial.

(14) In April, 1986, Civil No. 82201 was tried before the Honorable Melvin Soong, Acting Circuit Judge.

(15) During the aforesaid trial in Civil No. 82201, Ms. MCKENNA's attorneys attempted to put on proof as to the loss of her first investment but were precluded from doing so because those claims had not been plead in the original Complaint.

(16) Upon the conclusion of a lengthy trial in Civil No. 82201, Judge

Soong took the matter under advisement pending his issuance of a written decision.

(17) While the matter was under submission and before Judge Soong had issued any ruling in Civil No. 82201, a mandatory class action was certified in the United States District Court in Civil No. 84-0881, and Ms. MCKENNA's state court litigation was enjoined as part of a mandatory class settlement.

(18) Ms. MCKENNA objected to the mandatory class settlement and filed an appeal resulting in a settlement by which Ms. MCKENNA received all of the damages that were at stake in the state court litigation, Civil No. 82201.

(19) Because Defendants RYAN had sued only for Ms. MCKENNA's second investment of $71,246.75, her recovery in the federal court settlement was limited to that amount.

(20) Plaintiff is informed and believes, and thereupon alleges, that upon the establishment of her attorney-client relationship with Defendants RYAN a fiduciary relationship arose whereby Defendants RYAN owed Plaintiff a special duty of care to fully and properly exercise their professional judgment and utilize their professional skills to advance and protect Plaintiff's rights and interests.

(21) Defendants RYAN negligently breached their fiduciary duties and obligations to Plaintiff by failing to bring any lawsuit or make any claim for Plaintiff's first investment, for seeking damages in Civil No. 82201 only in the amount of $71,246.75, and for failing to demand a jury trial therein.

(22) Plaintiff relied to her detriment upon the express and implied assurances of Defendants RYAN that in

their representation of Plaintiff they would utilize and employ that degree of professional judgment and skill which is acceptable and minimally required in the community in which Defendants RYAN are engaged in the practice of law.

(23) Defendants RYAN breached their contract to advise, counsel and represent Plaintiff by failing to utilize and employ that degree of professional judgment and skill which is acceptable and minimally required in the community in which Defendants RYAN are engaged in the practice of law.

(24) As a direct and proximate result of the foregoing, Plaintiff has been and will be prevented from recovering her first investment in the amount of $75,000.00.

(25) As a direct and proximate result of the foregoing, Plaintiff has suffered severe anxiety, worry and

emotional distress in amounts to be proven at trial.

WHEREFORE, Plaintiff prays for relief as follows:

(1) For general damages according to the proof thereof at trial;

(2) For special damages according to the proof thereof at trial;

(3) For prejudgment and post-judgment interest;

(4) For reimbursement of her costs of suit herein including reasonable provision for her attorneys' fees;

(5) For such further and additional relief as the Court deems appropriate and just.

DATED: Honolulu, Hawaii, February 22, 1988.

/s/ Eric A. Seitz
ERIC A. SEITZ
JOAN M. YAMAGUCHI

Attorneys for Plaintiff
MARY LOU MCKENNA

1st Circuit Court
State of Hawaii
FILED
1984 MAR 27

_____
Clerk

RYAN & RYAN
A Law Corporation

JOSEPH A. RYAN 647-0
706 City Bank Building
810 Richards Street
Honolulu, Hawaii 96813
Tel. No. 533-2487

Attorney for Plaintiff

IN THE CIRCUIT COURT
OF THE FIRST CIRCUIT

STATE OF HAWAII

MARY LOU McKENNA-MORAN,	CIVIL NO. 82201
Plaintiff,	COMPLAINT and SUMMONS
vs.	
D. ALDEN NEWLAND, and NEWLAND, BLACK & IGE,	
Defendants.	

COMPLAINT

Comes now Plaintiff MARY LOU

EXHIBIT A

McKENNA-MORAN, and by and through her attorney, JOSEPH A. RYAN, claims against Defendants as follows:

1. Plaintiff is a resident of the City and County of Honolulu, State of Hawaii.

2. Defendant D. ALDEN NEWLAND is a resident of the City and County of Honolulu, State of Hawaii.

3. Defendant NEWLAND, BLACK & IGE, is, at all times herein mentioned, a partnership existing in the City and County of Honolulu, State of Hawaii, with offices at 2636 Grosvenor Center, 733 Bishop Street, Honolulu, Hawaii.

4. At all times herein mentioned, Defendant D. ALDEN NEWLAND was an attorney-at-law and a member of the partnership of NEWLAND, BLACK & IGE, and represented and advised Plaintiff in various matters including but not limited to a certain mortgage owed to

her by Klaus Reichardt on real property located in the State of California and in the sum of $71,490.65 with interest at 13% per annum.

5. That Plaintiff instructed her attorney to not foreclose said mortgage; however said attorney cajoled, taunted and induced her to foreclose said mortgage and to invest said sum in Bishop, Baldwin, Rewald, Dillingham & Wong, another client of said Defendant, and said Defendant assured Plaintiff that by doing so, she would realize more than 20% interest income on her money.

6. That Defendant prepared for her to sign on April 6, 1983, a consent to have the aforesaid money wired directly to Bishop, Baldwin, Rewald, Dillingham & Wong.

7. Thereafter and on or about June 22, 1983, the $71,246.75 belonging

to Plaintiff as aforesaid was received by Bishop, Baldwin, Rewald, Dillingham & Wong.

8. The aforesaid Bishop, Baldwin, Rewald, Dillingham & Wong firm was bankrupt and Defendant and his partnership knew or should have known of said financial condition of said firm.

9. Defendant was negligent in the rendering of services to Plaintiff, and his negligence was also compounded by a conflict of interest in that he was the attorney for Bishop, Baldwin, Rewald, Dillingham & Wong, and he negligently and wrongfully favored that client over Plaintiff resulting in the loss of her aforesaid funds.

10. As a result of the negligence of Defendant and his partnership aforesaid, Plaintiff has lost the last savings she possessed amounting to $71,246.75.

11. In addition to the aforesaid special loss or damage, Plaintiff has also suffered severe emotional harm and damage and she has been made sick, disgusted and frustrated and unable to so sleep; she has suffered aggravation of pre-existing conditions and required to seek medical help and attention and she has been caused to cry uncontrollably and made so sick she has been deprived of social contacts and the society of friends, all to her damage in the sum of $250,000.00 and such other special damage as will be proved at trial.

12. The negligence of Defendants was gross and reckless and warrants the imposition of punitive damages of not less than $500,000.00.

WHEREFORE, Plaintiff asks for judgment as follows:

(a) General Damages. . . $250,000.00

(b) Special damages
in excess of $71,246.75
at 13% interest from
June 22, 1983 and such
other special damage
as proved at trial.

(c) Punitive Damages of
not less than. . . . $500,000.00

(d) Attorney's fees and costs.

DATED: Honolulu, Hawaii, March 27, 1984.

MARY LOU McKENNA-MORAN

By /s/ Joseph A. Ryan
JOSEPH A. RYAN
706 City Bank Building
810 Richards Street
Honolulu, Hawaii 96813

Her Attorney

IN THE CIRCUIT COURT
OF THE FIRST CIRCUIT

STATE OF HAWAII

MARY LOU McKENNA-MORAN,	)	CIVIL NO. _____
	)	
Plaintiff,	)	SUMMONS
	)	
vs.	)	
	)	
D. ALDEN NEWLAND, and NEWLAND, BLACK & IGE,	)	
	)	
	)	
Defendants.	)	
	)	

SUMMONS

STATE OF HAWAII

To the above-named Defendants:

You are hereby summoned and required to serve upon JOSEPH A. RYAN, Plaintiff's attorney, whose address is Suite 706, City Bank Building, 810 Richards Street, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

DATED: Honolulu, Hawaii, MAR 27 1984.

/s/ S. Ikeda (seal)
Clerk of Court

IN THE CIRCUIT COURT
OF THE FIRST CIRCUIT

STATE OF HAWAII

MARY LOU McKENNA,	)	CIVIL NO. _____
	)	
Plaintiff,	)	DEMAND FOR JURY TRIAL
	)	
vs.	)	
	)	
JOSEPH RYAN and RYAN & RYAN, A LAW CORPORATION,	)	
	)	
	)	
Defendants.	)	
	)	

DEMAND FOR JURY TRIAL

Plaintiff MARY LOU MCKENNA hereby demands a jury trial as to all issues and matters so triable herein.

DATED: Honolulu, Hawaii, February 22, 1988.

/s/ Eric A. Seitz
ERIC A. SEITZ
JOAN M. YAMAGUCHI

Attorneys for Plaintiff
MARY LOU MCKENNA

STATE OF HAWAII CIRCUIT COURT OF THE FIRST CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT

Plaintiff	vs. Defendant
MARY LOU McKENNA	JOSEPH RYAN and RYAN & RYAN, A LAW CORPORATION

Plaintiff's Attorney
(Name, Address, Tel. No.)

ERIC A. SEITZ
JOAN M. YAMAGUCHI
820 Mililani Street #714
Honolulu, Hawaii 96813
Telephone: 533-7434

TO THE DEFENDANT(S):

You are hereby summoned and required to serve upon plaintiff's attorney, whose address is stated above, an answer to the complaint which is attached. This action must be taken within twenty days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer

within the twenty day time limit, judgment by default will be taken against you for the relief demanded in the complaint.

DATE ISSUED Clerk
FEB 22 1988 M. TANAKA (Seal)



Appendix "K"

FILED IN OPEN COURT
at 4:41 O'CLOCK P.M.
AUG 30 1991
/s/
Clerk

IN THE CIRCUIT COURT
OF THE FIRST CIRCUIT

STATE OF HAWAII

MARY LOU McKENNA,	) CIVIL NO. 88-) 0534-02
Plaintiff,	) (Legal Malprac-) tice)
vs.	)
	) SPECIAL VERDICT
JOSEPH RYAN and RYAN & RYAN, A Law Corporation,	) FORM)
Defendants.	)

SPECIAL VERDICT FORM
(8/30/91)

The jury must answer all of the questions unless otherwise indicated. To understand what issues are being submitted to you, you may wish to read over the entire Special Verdict before proceeding to answer. Answer the questions in numerical order. Follow all

directions carefully. Each answer requires the agreement of at least ten jurors; however, the same ten (10) jurors need not agree on each answer. If you do not understand any question or if you wish to communicate with the Court on any other subject, you must do so in writing through the Bailiff.

Please answer the following questions:

1. Did Alden D. "Dan" Newland act as the attorney for Plaintiff Mary Lou McKenna before May 4, 1983?

Yes x No ___*

2. If your answer to question 1 is "yes," did D. Alden "Dan" Newland violate his professional duties to Plaintiff Mary Lou McKenna?

Yes x No ___*

*If your answer to this question is no, stop and notify the court you have reached a decision.

3. If your answer to question 2 is "yes," were D. Alden "Dan" Newland's acts and omissions a legal cause of any injury to Plaintiff Mary Lou McKenna with respect to her first investment of $75,000.

Yes _x_ No ___*

4. If your answer to question 3 is "yes," did Joseph Ryan violate his professional duties to Mary Lou McKenna by failing to include any claim for Ms. McKenna's $75,000 investment in her lawsuit against D. Alden "Dan" Newland?

Yes _x_ No ___*

5. If your answer to question 4 is "yes," was Joseph Ryan's violation of those duties:

(a) negligent?

*If your answer to this question is no, stop and notify the court you have reached a decision.

Yes _x_ No ___**

(b) wanton or in reckless disregard of Plaintiff's interests?

Yes _____ No _x_**

6. If your answer is "yes," to either part (a) or part (b) of question 5 or both parts of question 5, were any of the acts and omissions of Joseph Ryan a legal cause of any monetary injury to Mary Lou McKenna?

Yes _x_ No ___**

7. If your answer is "yes," to either part (a) or part (b) of question 5 or both parts of question 5, were said acts and omissions of Joseph Ryan a legal cause of any mental anguish or emotional distress to Mary Lou McKenna?

Yes _x_ No ___**

8. If your answer is "yes," to

**Regardless of your answer to this question, please answer the next question on the next page.

question 6 or question 7 or both, what amount(s) of damages, if any, do you award to Plaintiff Mary Lou McKenna:

If yes to 6:

Special damages (monetary injury): 65,000.**

If yes to 7:

General damages (distress & suffering): 15,000.**

9. If your answer to question 3 is "yes," did Joseph Ryan disregard a request by Plaintiff Mary Lou McKenna to have her claims against Dan Newland tried in a jury trial?

Yes x No ___**

10. If your answer to question 9 is "yes," was the failure of Joseph Ryan to obtain a jury trial for Mary Lou McKenna a legal cause of any mental

**Regardless of your answer to this question, please answer the next question on the next page.

anguish or emotional distress to Mary Lou McKenna?

Yes _x_ No ___**

11. If your answer to question 10 is "yes," was Joseph Ryan's failure to obtain a jury trial:

(a) negligent?

Yes _x_ No ___**

(b) wanton or in reckless disregard of Plaintiff's interests and requests?

Yes _____ No _x_**

12. If your answer is "yes," to either part (a) or part (b) of question 11 or both parts of question 11, what amount(s) of damages, if any, do you award to Plaintiff Mary Lou McKenna for her mental anguish and emotional distress:

**Regardless of your answer to this question, please answer the next question on the next page.

General damages (distress and suffering): 5,000**

13. Was David C. Schutter or his law firm negligent with respect to the handling of Mary Lou McKenna's claim for $75,000 or her request for a jury trial?

Yes x No ___ (if no, skip to question 15)

14. If your answer to question 13 is "yes", were the acts of David Schutter or his law firm a legal cause of all or part of the same injury (if any) that Joseph Ryan caused Plaintiff Mary Lou McKenna?

Yes x No ___**

15. Was Eric Seitz negligent with respect to the handling of Mary Lou McKenna's claim for $75,000 or her

**Regardless of your answer to this question, please answer the next question on the next page.

request for a jury trial?

Yes ____ No _x_ (if no, skip to question 17)

16. If your answer to question 15 is "yes", were the acts of Eric Seitz or his law firm a legal cause of all or part of the same injury (if any) that Joseph Ryan caused Plaintiff Mary Lou McKenna?

Yes ____ No ___**

17. Was Plaintiff Mary Lou McKenna negligent with respect to the handling of Mary Lou McKenna's claim for $75,000 or her request for a jury trial?

Yes _x_ No ___ (if no, skip to question 19)

18. If your answer to question 17 is "yes", were the acts of Mary Lou McKenna a legal cause of all or part of

**Regardless of your answer to this question, please answer the next question on the next page.

the same injury (if any) that Joseph Ryan caused her?

Yes _x_ No ___**

19. If you have found the conduct of Joseph Ryan was negligent or wanton or both, and if you found (in answering questions 13 and 15) that one or more other persons were negligent and if you found (in answering questions 14 and 16) that their negligence legally caused damage to Plaintiff McKenna, then you are to apportion the percentages of negligence, if any, to each such person you found in the spaces provided below. Also, if you have found (in answering question 17) that Plaintiff McKenna contributorily negligent and if you have found (in answering question 18) that her

**Regardless of your answer to this question, please answer the next question on the next page.

contributory negligence legally caused damage to Plaintiff McKenna, you are to indicate in the space provided below what percentage of negligence, if any, you are placing on Plaintiff McKenna.**

Defendant Ryan	85%
Plaintiff McKenna	5%
David Schutter	10%
Eric Seitz	0%
TOTAL: (Note the total must equal 100%)	100%

20. If your answer to question 13 is "yes," then state whether the acts or omissions of David Schutter or the law firm of Schutter, Playdon & Cayetano were:

(a) a foreseeable risk.

Yes ___ No X **

OR

(b) a new and independent cause

**Regardless of your answer to this question, please answer the next question on the next page.

which destroyed the causal connection between the acts of Ryan and McKenna's injuries?

Yes ___ No x

DATED: Honolulu, Hawaii, Aug. 30, 1991.

/s/ Albert A. Perez
FOREPERSON